



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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November 23, 2005

Re: Board of Equalization Legal Opinion Request

Dear Mr. _____ :

This reply is in response to your letter addressed to Mr. Dean Kinnee, Chief of the Assessment Policy and Standards Division, dated August 8, 2005. In that letter, you made 11 inquiries regarding the treatment of fixtures and real property after a corporate change in ownership. Answers to your 11 inquiries follow below.

Background and Facts

As described in your letter, the following facts are relevant to this analysis:

1. On June 30, 1998, a corporation experienced a change in control when 100 percent of its stock was sold to buyers unrelated to the sellers. All of the corporation's assets, including fixtures but not other real estate were transferred on this date.
2. On July 1, 1998, a separate grant deed transferred ownership of the corporation's real estate. That grant deed made no mention of fixtures.
3. On February 18, 2003, the assessor's office completed an audit of the property owner's property statements for the years 1999 through 2002.
4. Property owner filed an Application for Changed Assessment (Application) with the assessment appeals board (appeals board) appealing the personal property and fixture escape assessments arising from that audit on April 16, 2003. That Application did not contest the base year values of the other real property.
5. On May 5, 2004, the county assessor served the property owner with a "raise letter" informing the property owner that the assessor's office sought to increase the assessed values of fixtures at the appeals hearing.
6. On August 19, 2004, the county assessor served the property owner with a second "raise letter" informing the property owner that the assessor's office sought to further increase the assessed values of fixtures at the appeals hearing.

Law and Analysis

1. Are fixtures real estate for property tax purposes?

Yes.

Subdivision (a)(1) of Property Tax Rule 122.5¹ defines a "fixture" as:

A fixture is an item of tangible property, the nature of which was originally personalty, but which is classified as realty for property tax purposes because it is physically or constructively annexed to realty with the intent that it remain annexed indefinitely.

Whether or not a particular fixture falls within this definition depends upon the facts in each case. To be a "fixture" under Rule 122.5, an appraiser must review the following characteristics listed in subdivision (a)(2) of the rule:

The manner of annexation, the adaptability of the item to the purpose for which the realty is used, and the intent with which the annexation is made are important elements in deciding whether an item has become a fixture or remains personal property. Proper classification, as a fixture or as personal property, results from a determination made by applying the criteria of this rule to the facts in each case.

Based on these criteria, an item of personalty may be characterized as a fixture or as personal property depending on how that item is attached to the real property and the intent of the owner. If the appraiser classifies the item of property as a fixture, the item has become real property. If not, that item remains personal property.

2. Are fixtures assigned a base year value as of the date that they change ownership?

Yes. As real property, fixtures are assigned a base year value upon a change in ownership.

Revenue and Taxation Code section 50² requires county assessors to establish a new base year value for real property upon a change in ownership or new construction. Section 50 provides, in part:

For purposes of base year values as determined by Section 110.1, values determined for property which is purchased or changes ownership after the 1975 lien date shall be entered on the roll for the lien date next succeeding the date of the purchase or change in ownership. Values determined after the 1975 lien date for property which is newly constructed shall be entered on the roll for the lien date next succeeding the date of completion of the new construction. The value of new construction in progress on the lien date shall be entered on the roll as of the lien date.

As described in our response to Question No. 1 above, the definition of "real property" includes fixtures. Consequently, section 50 requires county assessors to establish a base year value for fixtures upon a change in ownership or new construction.

¹ All references to "Property Tax Rules" or "Rules" are to Title 18 of the California Code of Regulations.

² All statutory references are to the California Revenue and Taxation Code, unless otherwise specified.

3. Are fixtures subject to the same valuation and assessment provisions of Proposition 13 and related laws and procedures?

Not entirely.

As real property, fixtures are subject to most of the constitutional, statutory, and regulatory provisions affecting the valuation and assessment of other real property. However, the assessment treatment of fixtures differs in three areas described in Assessors' Handbook Section 504, *Assessment of Personal Property and Fixtures* (AH 504). AH 504 provides several reasons for assessors to track fixture values separately from other improvements:

Property tax law requires that improvement value be shown separately from land value and personal property value on the assessment roll. However, there is no requirement that fixtures value be shown as a separate category of improvements. Nonetheless, it is necessary for the appraiser to make the distinction between fixtures and other improvements prior to enrollment, because classification may affect the audit procedures and valuation of property.

It is important to properly classify fixtures separate from other improvement items for several reasons:

1. Fixtures are a separate appraisal unit when measuring declines in value (Rule 461(e)).
2. Fixtures are treated differently than other real property (i.e., structure items) for supplemental roll purposes.
3. Fixtures and personal property values are components in the value criterion for determination of a mandatory audit. [Footnotes omitted.]³

When measuring declines in value, subdivision (e) of Property Tax Rule 461 requires assessors to treat fixtures as a separate appraisal unit. Page 96 of AH 504 provides:

Appraisal unit is defined in section 51(d) as the unit that (1) persons in the marketplace commonly buy and sell as a unit or (2) that is normally valued separately. Land and improvements, for example, are an appraisal unit because improvements are typically bought and sold with land. Fixtures not typically bought and sold separately in the market are also considered a separate appraisal unit under this section, because they are normally valued separately. Rule 461(e) provides that fixtures, and other machinery and equipment classified as improvements, are a separate appraisal unit when measuring a decline in value.

Treating fixtures as a separate appraisal unit when performing decline in value appraisals prohibits the appreciation of land and other improvements from offsetting the depreciation experienced by the fixtures themselves.

Section 75.5 removes from the definition of "property" subject to supplemental assessment, "fixtures which are normally valued as a separate appraisal unit from a structure" and certain possessory interests. Page 96 of AH 504 provides the following advice:

³ Assessors' Handbook Section 504, *Assessment of Personal Property and Fixtures* (AH 504), October 2002, page 95.

With regard to fixtures, this exclusion from supplemental assessment applies only to fixtures that are normally valued as a separate appraisal unit from the land and other improvements on which they are located. It does not apply to fixtures that are included with other property as part of a single appraisal unit that changes ownership or is newly constructed. If an entire property containing land, structures, and fixtures is valued as a single appraisal unit upon a change in ownership or new construction, the fixtures included in the unit are subject to supplemental assessment. [Footnotes omitted]

Lastly, subdivision (a) of section 469 includes fixtures in the calculations that determine whether or not an assessee is subject to mandatory audits.

Other than the three deviations described above, fixtures are subject to the same constitutional, statutory, and regulatory provisions affecting the valuation and assessment of other real property.

4. Can a base year value of fixtures be appealed more than four years from the year in which the change in ownership of the fixtures took place?

It depends on the type of error alleged in the Application.

The statutory authority for base year value corrections is set forth in section 51.5. The period for making such corrections depends upon the reason for the error or omission:

If the error or omission does not involve an exercise of value judgment, then subdivision (a) provides, in pertinent part, that the correction shall be made "in any assessment year in which the error or omission is discovered." However, if the assessor declines to make a base year value correction pursuant to subdivision (a) of section 51.5, an appeals board has jurisdiction to hear an appeal to correct an alleged error in setting a base year value in any year in which the error is discovered. (*Sunrise Retirement Villa v. Dear* (1997) 58 Cal.App.4th 948.) In such a case, the appeals board's jurisdiction is not subject to the four-year statute of limitations prescribed in subdivision (a)(4) of section 80.

Errors or omissions involving an exercise of value judgment are subject to a four-year time limit. Subdivision (b) of section 51.5 provides "it may be corrected only if it is placed on the current roll or roll being prepared, or is otherwise corrected, within four years after July 1 of the assessment year for which the base year value was first established." Thus, appeals based on errors or omissions in value judgement are subject to a four-year time limit, while corrections not arising from an error in value judgement may be appealed at any time.

5. If fixtures transfer on June 30, 1998, what would be the period during which the taxpayer could appeal their timely enrolled value?

If an assessee asserts an error in value judgment, that assessee may file an Application appealing its fixtures' base year values for the 60 days following its supplemental assessment notice, during the regular filing period for the first year those fixtures appear on the regular—not supplemental—assessment roll, or during the regular filing period for the three following years.

Filing deadlines for an Application are explained in the Board's May 2003 publication *Assessment Appeals Manual* (AAM). Pages 30-31 of the AAM describe those deadlines as follows:

Applicants who want to appeal a property's base year value have two filing periods:

1. Filing based upon the supplemental assessment notice (60-day filing period)—An applicant may file an application within 60 days after the date of mailing printed on the supplemental assessment notice, or the postmark date, whichever is later; or, in some counties, within 60 days of the date of mailing printed on the supplemental tax bill, or the postmark date, whichever is later. . . .

2. Regular filing period

a. Filing July 2 – September 15 for the new base year value during the first year of enrollment on the current local roll, not on the supplemental roll, or three succeeding years when a notice of assessed value is mailed pursuant to section 1603—If the applicant misses the 60-day supplemental assessment filing period, the new base year value may be appealed during the regular filing period in the year that the base year value is enrolled by the assessor or the three following years. If the appeals board reduces the base year value, the reduction is effective in the year in which the application was filed and any future years, but is not retroactive. . . .

b. Filing July 2 – November 30 for the new base year value during the first year of enrollment on the current local roll, not on the supplemental roll, or the three succeeding years when a notice of assessed value is not mailed pursuant to section 1603—The regular filing period is extended to November 30 for base year value appeals in the first year and the three succeeding years when the assessor does not provide, by August 1, notices to assessees of the assessed value of their real property as it will appear, or does appear, on the secured roll. [Emphasis retained and Footnotes omitted.]

Under the provisions listed above, the assessee may first file an Application within 60 days after the date of mailing printed on the supplemental assessment notice. If the assessee misses that deadline, the assessee may then submit an Application during the regular filing period for the first year the assessment appears on the regular, not supplemental, assessment roll, or for the three years thereafter. In the case of a June 30, 1998 change in ownership (and assuming timely enrollment), those fixtures would first appear on the regular assessment roll for the January 1, 1999 lien date. The assessee may timely file base year value appeals during the regular filing periods for the years 1999, 2000, 2001, and 2002.

6. How would the appeal period differ if the fixtures transferred one day later, on July 1, 1998?

Since this assessment would first appear on the same 1999 regular—not supplemental—assessment roll, it would be subject to the same deadlines described above.

Applying the same filing deadlines described in our answer to Question No. 5 above would yield the same result. Base year values of property experiencing a change in ownership on July 1, 1998 may be appealed within 60 days after the date of mailing printed on the supplemental assessment notice. If the assessee misses that deadline, then the assessee may then submit an Application during the regular filing period for the first year the assessment appears on the regular—not supplemental—assessment roll, or for the three years thereafter. In the case of a July 1, 1998 change in ownership (and assuming timely enrollment), those fixtures would first appear on the regular assessment roll for the January 1, 1999 lien date. The assessee may then timely file base year value appeals during the regular filing periods for the years 1999, 2000, 2001, and 2002.

7. If the fixtures transfer on June 30, 1998 and the assessor chooses not to enroll the assessment until January 1, 1999, does this alter the statute of limitations for filing an appeal of the June 30, 1998 base value?

No.

As described in our answer to Question No. 5 above, assessees may file an Application contesting base year values first enrolled on the January 1, 1999 lien date during the regular filing period for the years 1999, 2000, 2001, and 2002.

8. If the fixtures transfer on July 1, 1998 and the assessor chooses not to enroll the assessment until January 1, 1999, does this alter the statute of limitations for filing an appeal of the June 30, 1999 base value?

No.

See our answer to Questions Nos. 5, 6, and 7, above.

9. If for some reason a county does not value and assess fixtures as of their date of transfer, does this alter the administrative rules relative to the date of change of ownership and how the transfer date is incorporated into the assessment process and assessment appeal process? Expressed another way, if fixtures and real estate are both subject to the same treatment under Proposition 13, should there be any difference in how fixtures are assessed and when they are assessed?

Yes. Aside from the valuation and assessment differences described in our answer to Question No. 3 above, fixtures are subject to the same constitutional, statutory, and regulatory provisions affecting the valuation and assessment of other real property. However, subdivision (b) of Property Tax Rule 264 may extend the base year value correction deadline for untimely assessments.

In our answer to Question No. 3 above we described the three differences between fixture and improvement valuations and assessments. Those differences concern decline in value assessments, the mandatory audit threshold, and the exclusion of certain fixtures from supplemental assessment. Other than these differences, fixtures are subject to the same constitutional, statutory, and regulatory provisions affecting the valuation and assessment of other real property.

Nevertheless, subdivision (b) of Property Tax Rule 264 may extend the deadline for base year value corrections when the county assessor has made an untimely enrollment of real property. Property Tax Rule 264 provides, in part:

(a) Notwithstanding any other provision of the law, any error or omission in the determination of a base year value pursuant to paragraph (2) of subdivision (a) of Section 110.1 of the Revenue and Taxation Code, including the failure to establish that base year value or the determination of a change in ownership, which does not involve the exercise of an assessor's judgment as to value, shall be corrected in any assessment year in which the error or omission is discovered. . . .

(b) An error or an omission described in subdivision (a) which involves the exercise of an assessor's judgment as to value *may be corrected only if it is placed on the current roll or roll being prepared, or is otherwise corrected, within four years after July 1 of the assessment year for which the base year value was first established. "The assessment year for which the base year value was first established" means the assessment year during which the assessor actually enrolls the new base year value* resulting from a change in ownership or completion of new construction. . . . [Emphasis added.]

Pursuant to subdivision (b) of Rule 264, the assessor shall enroll base year value corrections within four years after July 1 of "the assessment year for which the base year value was first established." However, the rule goes on to define "the assessment year for which the base year value was first established" to mean *the actual year during which the assessor actually enrolled the new base year value*. Thus, if a county assessor untimely enrolls a new base year value, the assessor has four years from the July 1 of the actual year of enrollment to correct (and the assessee four years to appeal) that new base year value. Consequently, if for some reason a county assessor does not timely establish a new base year value for fixtures as of the date of their change in ownership, Rule 264 alters the administrative rules regarding the correction and appeal of that new base year value.

10. Can a local appeals board, at the request of the Assessor and not of the Applicant, invoke its jurisdiction and allow a base year value case to be heard that was filed beyond the four-year statute of limitations?

No, county assessors, applicants, and appeals boards are all subject to the statutes of limitation prescribed by sections 51.5 and 75.11.

As described in our answers to Questions Nos. 5 and 9 above, section 51.5 and Property Tax Rule 264 limit base year value corrections involving an exercise of value judgment to a four-year time period. Subdivision (b) of section 51.5 provides "it may be corrected only if it is placed on the current roll or roll being prepared, or is otherwise corrected, within four years after

July 1 of the assessment year for which the base year value was first established." This deadline applies to county assessors, property owners, and appeals boards. In the case of a June 30, 1998 change in ownership (and assuming timely enrollment), those fixtures would first appear on the regular assessment roll for the January 1, 1999 lien date. The property owner may timely file base year value appeals during the regular filing periods for the years 1999, 2000, 2001, and 2002.

With regard to supplemental assessments of real property, county assessors, applicants, and appeals boards are also all subject to the same statute of limitations. Subdivision (d) of section 75.11 provides the statute of limitations for supplemental assessments:

No supplemental assessment authorized by this section shall be valid, or have any force or effect, unless it is placed on the supplemental roll on or before the applicable date specified in paragraph (1), (2), or (3), as follows: (1) The fourth July 1 following the July 1 of the assessment year in which the event giving rise to the supplemental assessment occurred. . . .

For the purposes of this subdivision, "assessment year" means the period beginning annually as of 12:01 a.m. on the first day of January and ending immediately prior to the succeeding first day of January.

In Letter To Assessors (LTA) No. 2002/014, the Board provided the following advice regarding the application of this statute of limitations on supplemental assessments:

Effective January 1, 2002 . . . Chapter 407 changes the commencement date of the limitations period contained in subparagraphs (d)(1) and (d)(2) of section 75.11 from July 1 of the assessment year in which a change in ownership statement or a preliminary change of ownership report was filed, to July 1 of the assessment year in which the event occurred. With this change, the commencement date of the limitation periods contained in subparagraphs (d)(1), (d)(2), and (d)(3) now coincide.

"Assessment year" is defined in section 118 as the period beginning with a lien date and ending immediately prior to the succeeding lien date. Under current law, since the lien date is January 1, the assessment year is synonymous with the calendar year. Under the new law regarding supplemental assessments, "July 1 of the assessment year in which the event giving rise to the supplemental assessment occurred" is, for example, July 1, 1998, for reappraisable changes in ownership and completed new construction that occurred in 1998. In this example, supplemental assessments that are subject to the four-year limitations period of subparagraph (d)(1) must be enrolled by July 1, 2002, to be valid. [Footnotes omitted.]

The example cited in LTA No. 2002/014 describes facts similar to those presented in your letter. For purposes of an supplemental assessment, the same statute of limitations would apply whether those fixtures experienced a change in ownership on June 30 or July 1, 1998. Any supplemental assessment arising from that change in ownership must be enrolled by July 1, 2002, to be valid.

When correcting an error in value judgment, the statute of limitations for base year value corrections allows county assessors to correct, and applicants to appeal, the first year the assessment appears on the regular—not supplemental—assessment roll, and the three years thereafter. In a similar manner, assessors must enroll supplemental assessments by the fourth

July 1 following the July 1 of the assessment year in which the change in ownership or new construction occurred.

Applying these time limits apply to situation presented in your letter yields the same result: all base year value corrections for timely enrolled assessments involving errors in value judgment and supplemental assessments must be made by July 1, 2002.

11. Can a local appeals board, at the request of the Assessor and not of the Applicant, effectively amend the application of a roll change appeal of personal property and fixtures originating from an audit change (Appeal Form Boxes E1, H1, and H2) to include a base year appeal on real property and fixtures?

It depends on whether the real property and fixtures have been appraised and assessed together as a unit. Subject to the applicable statute of limitations, an appeals board may increase or decrease the assessed value of the entire appraisal unit when that entire unit was subject to reassessment.

Page 54 of the AAM describes those situations when the appeals board may adjust the values of property not under protest:

VALUATION OF PROPERTY NOT PROTESTED

An appeals board is empowered to adjust by increasing or decreasing the value of all portions of a property even though only the value of certain portions of the property have been contested by the taxpayer. However, an appeals board may take such action only on properties that have been appraised and assessed together as a unit and only when the entire unit is subject to reassessment. For example, an appeal filed on tenant improvements added to a shopping center would not permit an appeals board to increase or decrease the assessed value of the entire shopping center, unless the entire shopping center has been recently constructed or undergone a change in ownership and is still eligible for review of its base year value, or has experienced a decline in value pursuant to section 51. [Footnotes omitted.]

This authorization has a statutory basis in section 1610.8, which provides in part:

After giving notice as prescribed by its rules, the county board shall equalize the assessment of property on the local roll by determining the full value of an individual property, *by assessing any taxable property that has escaped assessment*, correcting the amount, number, quantity, or description of property on the local roll, canceling improper assessments, and by reducing or increasing an individual assessment, as provided in this section. [Emphasis added.]

The facts, as presented here, are silent as to whether the real property and fixtures have been appraised and assessed together as a unit. If the real property and fixtures have been appraised and assessed together as a unit, the AAM authorizes the appeals board to adjust the values of property not under protest. Such authorization is consistent with statutory requirement that the appeals board assess "any taxable property that has escaped assessment . . ." and is subject to the applicable statute of limitations; i.e., the property "is still eligible for review of its base year value." Conversely, the AAM does not authorize the appeals board to adjust the values

of property not under protest if the real property and fixtures have been separately assessed, or if the property's base year value is not eligible for review.

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

A handwritten signature in black ink that reads "Michael Lebeau". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Lebeau
Senior Tax Counsel

ML:jlh

Prop/prec/Fixtures/05/742-ml.doc

cc: Honorable
County Assessor

Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Mickie Stuckey, MIC:62
Mr. Todd Gilman, MIC:70